IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 4310 of 1994

with

SPECIAL CIVIL APPLICATION No 4309 of 1994

For Approval and Signature:

HON'BLE MR.JUSTICE H.K.RATHOD

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

ADMINISTRATOR, ARASURI AMBAJI MANDIR

Versus

JAYSINH KISHORESINH

Appearance:

1. Special Civil Application No. 4310 of 1994
   MR JD AJMERA for Petitioner No. 1
   MR RK MISHRA for Respondent No. 1
2. Special Civil Application No. 4309 of 1994
   MR JD AJMERA for Petitioner No. 1
   ..... for Respondent No. 1

CORAM : HON'BLE MR.JUSTICE H.K.RATHOD

Date of decision: 19/02/2004

ORAL JUDGEMENT

Heard learned advocate Mr. J.D.Ajmera for the petitioner and Mr. R.K. Mishra, learned advocate for the respondent. In these petitions, common award made by the labour court, Ahmedabad in Reference No. 969 of 1987 dated 29.1.1994 is challenged by the petitioners wherein the labour court has granted reinstatement in favour of the workman Shri Jaysinh Kishorsinh and Dahyalal Raval and has rejected the relief of reinstatement in respect of the workman Shri Gangaram Purabia by directing the petitioner first party to make payment of his legal rights for a period upto 31.12.1993 within one month from the date of publication of the award. That part of the award has not been challenged by the petitioner in respect of the workman Gangaram Purabia.

Today, when these two petitions were taken up for final hearing, learned advocate Mr. Ajmera appearing for the petitioner has made a statement before this court that the workman Dahyalal Raval who is the respondent in Special Civil Application NO. 4309 of 1994 has expired on 17th April, 1999. Said statement made by the learned advocate Mr. Ajmera has not been challenged by the learned advocate Mr. Mishra who is appearing for the said workman.

Learned advocate Mr. Ajmera appearing for the petitioner submits that while on duty, both the workmen were playing cards and therefore, they were served with the charge sheets and thereafter, departmental inquiry was initiated against them and ultimately, their services were terminated by the petitioner. He also submits that before the labour court, the workmen concerned had not challenged the legality, validity and propriety of the departmental inquiry and, therefore, charge was proved against the respondent workmen and in view of that, the labour court should not have interfered with the order of punishment in exercise of the powers under sec.11A of the ID Act, 1947. He also submits that the labour court has committed an error in coming to the conclusion that the punishment is little harsh because it was the first misconduct committed by the workmen. Thus, according to his submission, the labour court has committed an error in interfering with the punishment imposed by the petitioner against the respondents.

On the other hand, learned advocate Mr. R.K. Mishra appearing for the workmen concerned submits that the workmen concerned had not challenged the legality and validity of the departmental inquiry and that is how the labour court examined the matter on the question of quantum of punishment and ultimately the labour court appreciated the oral evidence led before it and relevant record of the departmental inquiry and after considering the evidence on record, the labour court came to the conclusion that the misconduct as alleged against the workmen was proved but the labour court has taken reformative step by giving reinstatement in favour of the workmen as in past there was no such misconduct committed and, therefore, the labour court was right in exercising the powers under section 11-A of the Industrial Disputes Act, 1947 and in doing so, the labour court has not committed any error.

I have considered the submissions made by the learned advocates for the parties. I have also perused the award in question made by the labour court. The workman Shri Jaysinh Kishorsinh was examined before the labour court at Exh. 43 and it was deposed by him that he remained unemployed from the date of termination. Similarly, another workman Shri Dahyalal R. Raval was examined at Exh. 44 before the labour court and he also deposed in the same terms that he remained unemployed from the date of termination. Both the workmen had not challenged the legality, validity and propriety of the findings recorded in the departmental inquiry. Therefore, considering that part of the matter, the labour court has come to the conclusion that while on duty, both the workmen were playing cards and it was reported by the higher authority to the concerned authority and the matter was taken up accordingly. In view of this misconduct proved against the respondents, as per the findings given by the labour court, the labour court has considered the past record of the workman and in past, there was no such serious default committed by the workman and just to have the reformative measure, the labour court exercised the powers under section 11-A of the ID Act, 1947 and directed for their reinstatement in service with continuity of service but without back wages for the intervening period only for the sake of their families that their families may not be deprived of the benefit of maintenance. Thus, considering their proved misconduct, the labour court refrained itself from granting any back wages for the intervening period by way of punishment and considering the harsh punishment of termination and also considering the past clean record wherein no such misconduct was alleged against the

workmen, the labour court granted reinstatement only with continuity of service in exercise of the powers under section 11A of the ID Act, 1947. As per the decision of the apex court in Jitendra Singh Rathor versus Shri Baidyanath Ayurved Bhavan Ltd. reported in AIR 1984 SC 976 wherein it has been held that where the tribunal/labour court while directing reinstatement withheld payment of half of the back wages keeping in view the proved misconduct of the employer, withholding of half of the back wages in the nature of penalty, in such a case, it could not be said that the relief of reinstatement was being granted on terms of withholding of half of the back wages and, therefore, did not constitute penalty. Relevant discussion is there in para 3 and 4 of the said decision. Decision in case of Gyanchand versus Union of India reported in 1983 (1)GLR 666 is also in the same subject. In that matter, Railway Rakshak servants were found playing with carts while on duty in running train and that was reported to the officer and ultimately punishment of dismissal was imposed against those two persons. This Court has, after considering various decisions, come to the conclusion that for the mere charge of playing cards while on duty, dismissal from service is harsh and unjustified at the most, it could be considered as negligence or lack of responsibility on the part of workmen concerned not deserving the extreme punishment of dismissal. In the matter of SCOOTER INDIA LIMITED VERSUS LABOUR COURT, LUCKNOW reported in AIR 1989 SC 149, same aspect was considered by the apex court. The view taken is to the effect that when the inquiry has been admitted by the workman and even the finding is also established against the workman, the labour court can exercise the powers under sec. 11A of the ID Act by giving one chance to the workman as a reformative measure and can grant reinstatement without back wages or with back wages for the intervening period. Therefore, considering the aforesaid decisions and the facts and circumstances of this case, considering the fact that one workman Dahyalal Raval has already expired, according to my opinion, the award made by the labour court in exercise of the powers under sec. 11A of the ID Act, 1947 does not require any interference of this Court in exercise of the powers under Article 227 of the Constitution of India as no irregularity and/or jurisdictional error has been pointed out by the learned advocate for the petitioner.

Therefore, considering the decision of the apex court reported in 2003 (9) SCC 452, this court cannot critically analysis the decision of the lower court and, therefore, there is no substance in these petitions and

the same is, therefore, required to be dismissed.

For the reasons recorded hereinabove, these petitions are dismissed. Rule in each of these petitions is discharged. Interim relief, if any, shall stand vacated. There shall be no order as to costs.

(H.K. Rathod,J.)

Vyas